



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

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February 16, 2005

Mr. Michael Winter
City Attorney
City of Antigo
700 Edison Street
Antigo, WI 54409-1955

BRRTS ID#: 07-34-538694

Mr. Robin Stowe
Corporation Council
Langlade County
Courthouse, Room 109
Antigo, WI 54409-1985

Subject: LGU General Liability Clarification Letter for Hazardous Substances and Wastes associated with the former Langlade Oil Company property, 608 4th Avenue, Antigo, Wisconsin

Dear Messrs. Winter and Stowe:

Purpose

The purpose of this letter is to respond to a City of Antigo ("City") request, dated December 22, 2004, for a general liability clarification letter associated with the environmental conditions at the former Langlade Oil Company property located at 608 4th Avenue, Antigo, Wisconsin ("Property"). The Property is owned by the dissolved Langlade Oil Company, Inc., and is currently tax delinquent.

Request

The City requested clarification with respect to how the local governmental unit (LGU) exemption, s.292.11 (9) (e), Wis. Stats., and the hazardous waste enforcement discretion pilot program by the Wisconsin Department of Natural Resources ("Department") and the United States Environmental Protection Agency ("EPA"), would affect the City's and Langlade County's ("County's") environmental liability for the Property if either party chooses to acquire title to the Property. The Department understands that the County plans to foreclose on the Property due to delinquent taxes, and then pass the title for the Property to the City as a final step in the tax foreclosure process.

The Property is currently a vacant lot in a commercial area of Antigo immediately north of 4th Avenue east of the Spring Brook dam, in Langlade County. The Property was historically used for wholesaling petroleum products. Langlade Oil Company, Inc. has been out of business since approximately 1986 and was dissolved as a corporation in 1990. The Property has been tax delinquent since at least 1990.

As noted in your letter to the Department, the Property may be used in the future for a portion of the Antigo Lake Parkway Project. The Property would be developed as a park.

To assist in making these liability clarification determinations, the Department has reviewed the following documents:

- The December 22, 2004 request for a General Liability Clarification Letter (GLCL) from the City of Antigo (with a \$500 fee).
- Report titled "Site Assessment Work Plan, Former Langlade Oil Company", prepared by STS Consultants, Ltd., dated September 21, 2001.
- Report titled "Site Investigation Report, Former Langlade Oil Company, Inc. Property", prepared by STS Consultants, Ltd., dated August 19, 2002.
- Site Investigation Scope of Work, prepared by the Department, dated March 2001.
- Letter "Langlade Oil Site (Former), 600 Block 4th Street, Antigo, WI", prepared by Ramaker and Associates, Inc., dated October 28, 1999.

Background and Summary of Environmental Conditions

Below is a summary of the known environmental conditions or concerns.

Nine, 10,000-gallon above-ground storage tanks were located on the Property and operated until the early 1980s. When business ceased at the Property, the above-ground storage tanks (ASTs) were abandoned in place. The ASTs were removed from the Property in late 1987. The City of Antigo demolished and removed the building in 1990. Some soil may have been excavated and removed from the Property when the ASTs were removed or the building demolished. There are currently no ASTs, no known underground storage tanks (USTs), no buildings, and no unidentified containers or substances on the Property.

Petroleum contamination was confirmed by analytical results from three soil samples collected by Northwest Petroleum on behalf of the City on July 16, 1990. Ramaker and Associates, Inc., on behalf of the City, advanced five soil borings on the Property on August 30, 1999. Elevated concentrations of petroleum contamination were detected during analysis of soil samples collected from the soil borings. Benzene was detected at a concentration greater than the ch. NR 140, Wisconsin Administrative Code ("WAC"), enforcement standard in one groundwater sample collected from a soil boring.

The Department conducted a site investigation at the Property in late 2001 and early 2002. The site investigation consisted of performing 15 soil borings and installing 8 monitoring wells and one piezometer. The site investigation detected significant petroleum and lead contamination in soils on the Property. Surface soils contain petroleum and lead contamination greater than chs. NR 720 and NR 746, Wis. Admin. Code, generic contaminant concentrations considered protective of direct contact.

Chapter NR 140, Wis.Admin.Code, groundwater enforcement standards were not exceeded in groundwater samples collected from the monitoring wells installed as part of the Department's site investigation. Benzene and naphthalene exceeded the ch. NR 140, Wis. Admin. Code, preventive action limits in groundwater samples collected from MW-3.

Liability Determination

The intent of this letter is two-fold. The initial intent is to clarify the County's and City's environmental liability under s. 292.11, Wis. Stats., commonly called the Spill Law. If an LGU acquires property through tax delinquency proceedings, bankruptcy proceedings, condemnation, eminent domain (according to Ch. 32, Wis. Stats.), escheat, for slum clearance or blight elimination, by using Stewardship funds, or from another eligible LGU, the LGU is not responsible to investigate or clean up a hazardous substance discharge at the property, if the statutory requirements under s. 292.11(9)(e), Wis. Stats., are met.

Since the County will be acquiring the Property through the tax delinquency process, and the City plans to acquire the Property as a final extension of that process, both the City and County should be eligible for the protections of the Spill Law exemption. The City need not make a "blight" finding or a "friendly condemnation" finding in order to accrue the protections of the LGU exemption. Simply by acquiring the Property from the County would be enough, as provided for in s. 292.11(9) (e)1m.b., Wis. Stats., since the County acquired by the Property through an eligible means.

The second purpose of this letter is to clarify the County's and City's environmental liabilities under the state's Hazardous Waste Law, Ch. 291, Wis. Stats., if they were to become "owners" of the Property, where the soil, groundwater or both may be contaminated with hazardous waste compounds. The US EPA has granted the Department the ability to exercise enforcement discretion in determining whether or not to hold a local government liable for clean-up costs, as an "owner" of a property with hazardous waste implications. The Department may exercise this enforcement discretion if the LGU takes title to a property through methods consistent with the LGU exemption criteria in the state Spill Law. In addition to meeting these statutory criteria, the LGU would need to determine if any containerized material is defined as a hazardous waste and properly manage the containerized waste.

Based on our review of the available information, the Department has determined that the County's and City's proposed acquisition of the Property meets the conditions of s. 292.11(9) (e), Wis. Stats., if the County and City take the title through the tax foreclosure process. In addition, the Department agrees to exercise enforcement discretion under Wisconsin's Hazardous Waste Management Laws, regarding the provisions of ss. 291.25(1) to (5), 291.29, and 291.37, Wis. Stats., and the rules promulgated under those provisions. The Department will not hold the County or City liable for the investigation or clean-up of the Property under either the states' Spill Law or Hazardous Waste Laws, if the following requirements continue to be satisfied:

- The County's and City's proposed method of acquisition of the Property is carried out through tax delinquency proceedings, as provided in s. 292.11(9) (e) 1m.a and b., Wis. Stats.;
- The LGU did not cause the discharge, nor was a discharge of a hazardous substance caused by failure of the LGU to take one or more of the following limited actions:
 - restricting access to the property in order to minimize costs or damages that may result from unauthorized persons entering the Property;
 - sampling and analyzing unidentified substances in containers stored above ground on the Property; and
 - removing and disposing, or properly storing, any hazardous substances in above ground containers that are leaking or likely to leak.
- With respect to any hazardous waste on the Property, the LGU makes determination as to whether or not any containerized material is defined as a hazardous waste and then properly manages the

containerized hazardous waste. Presently, the Department is unaware of any materials or contaminated media that meet the definition of a hazardous waste on the Property.

- If the County or City uses or develops the Property, the County and City agrees to take any action the Department determines is necessary to reduce to acceptable levels any substantial threat to public health or safety when the Property is developed or put into its intended use (s. 292.11(9)(e)4., Wis. Stats.)

If the City intends to develop the Property into parkland, under Section 292.11(9)(e)4 Wis. Stats., the City will need to protect the public from direct contact from the lead and petroleum contaminated surface soils in order to maintain the exemption from the Spill Law. Past discussions with the City concerning strategies to address the direct contact issue have included using clean fill material generated by the City at a separate project as fill to cap the area where there are concerns over exposure through direct contact with contaminated soil. This general strategy is acceptable; however, the DNR recommends that the City follows our capping guidance and asks for our technical review of this remedial action to ensure that the work is acceptable.

The City will need to place a deed restriction on the Property, develop and implement a cap maintenance program, and place the property on the GIS Registry in order to ensure no long-term threats to public health and safety. Also, due to the proximity of the project to Spring Brook a permit under Chapter 30 Wis. Stats. may be required prior to filling and grading the site. Any contaminated materials excavated on the Property will need to be managed in accordance with state and federal laws.

- The City needs to allow the Department, authorized representatives the Department, any party that possessed or controlled the hazardous substance or caused the discharge of the hazardous substance and any consultant or contractor of such a party to enter the Property to take action to respond to the discharge (s. 292.11(9)(e)6., Wis. Stats.);

The Department intends to continue periodic groundwater monitoring at the site. Groundwater samples will be collected quarterly for at least one year. The groundwater monitoring wells installed during the Department's site investigation need to be protected during any development of the site. The City will need to coordinate work on the Property with the Department so the monitoring wells can be modified to any new grade established on the Property. The City will grant access to the Department to continue groundwater monitoring.

This liability determination is based solely on the information provided in the above referenced report(s). The Department makes no determination concerning the presence or absence of hazardous substances other than those identified in the report(s) identified above. If new or more extensive contamination is discovered at the Property, the owner – County or City – is required to notify the Department. The County and City should also understand that the LGU exemption and the hazardous waste enforcement discretion decision by the Department, will continue throughout the County's and City's ownership of the Property and beyond, but is not transferable from the County or the City to future owners, except to another LGU.

For your information, information on all determinations such as this are tracked in a Department database that is available on the internet at www.dnr.state.wi.us/org/aw/rr (see "BRRTS" under "Find Sites"). The Bureau for Remediation and Redevelopment Tracking System ("BRRTS") identification number for this location is shown at the top of this letter. The Property will be shown as a location where the Department has made a "LGU Exemption" determination.

The Department supports the County's and City's efforts to acquire contaminated properties and to proactively work to put such properties back into productive use. This late summer or early fall, the DNR will again, hopefully, have funds available through its Greenspace and Public Facilities Grant program and its new \$4 million revolving loan and grant program. If you have any additional questions or further concerns, please feel free to contact me at (715) 365-8976 or project manager John Sager at (715) 623-4190 ext. 3125.

Sincerely,



John Robinson

Regional Remediation and Redevelopment Team Supervisor

→ cc: John Sager
Dan Kolberg – RR/3